

DECISION

curcio
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

27466

FILE: B-214279**DATE:** February 22, 1984**MATTER OF:** Nikiski Marine, Inc.**DIGEST:**

Protest not filed until more than 3 years
after protester learns the basis of its
protest is dismissed as untimely.

Nikiski Marine, Inc. (Nikiski), protests an interim
lease of the deactivated Flaxman Island Distant Early Warn-
ing site (Flaxman) granted to the North Slope Borough (North
Slope).

The protest is dismissed.

The facts presented by Nikiski's protest letter are not
entirely clear. However, it seems that in August 1972 the
Air Force filed a notice that it was going to release most
of Flaxman to the Secretary of the Interior to lease pursu-
ant to 49 U.S.C. § 211 (1976); 43 C.F.R. § 2911 (1983).
Nikiski filed an application to lease this area in October
1978. After some investigation and contact with the Depart-
ment of the Interior, Bureau of Land Management (BLM), the
Air Force learned that BLM could not accept the land until
certain work was performed there and that the Air Force
would have to make the decision to lease the area on an
interim basis.

The record indicates that initially the Air Force
contemplated granting a noncompetitive lease to Nikiski
since Nikiski was the only firm that expressed interest
in leasing the site. However, the Air Force later learned
that Exxon U.S.A. also was interested in leasing the land
and determined that the lease would have to be granted
pursuant to a competitive bid. The record also indicates
that North Slope submitted an application to lease the land
in November 1980, and that Nikiski became aware of North
Slope's interest and the Air Force's intent to issue the
lease competitively in December 1980.

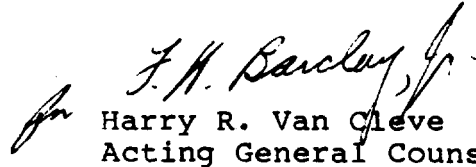
Nikiski requests that we investigate the possibility
of having North Slope's lease set aside. Nikiski seemingly
believes that it should have been awarded the lease on a
noncompetitive basis because it was the first firm to
express an interest in leasing the area and that other firms

028037

only became aware of the possibility of leasing the land through Nikiski's application. Nikiski also alleges that North Slope is not performing its responsibilities in accordance with the terms of the lease.

The protest is dismissed.

Under our Bid Protest Procedures, a protest not based on a solicitation impropriety must be filed with our Office or the agency involved within 10 days after the protester learns the basis of its protest. 4 C.F.R. § 21.2(a), (b)(2) (1983). Here, the record demonstrates that Nikiski became aware of the basis of its protest at least as early as November 1980. Thus, since Nikiski's protest was not filed with our Office until February 2, 1984, it is clearly untimely and will not be considered on the merits.


Harry R. Van Cleve
Acting General Counsel